

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James G. Corriveau,

Civil 10-3933 SRN/FLN

Plaintiff,

v.

REPORT & RECOMMENDATION

City of Anoka, et al.,

Defendants.

On November 7, 2012, the Court denied the Motion to Substitute Party [Docket Entry # 101] because no personal representative had yet been appointed to represent the estate of the deceased Plaintiff in this case. [Docket Entry # 112] Rule 25 of the Federal Rules of Civil Procedure provides that an action must be dismissed if a Motion for Substitution of the proper party is not made within 90 days after service of a statement noting the death of a party. In its Order denying the Motion to Substitute, the Court noted that the parties' July 11, 2012, status report constituted the statement noting the death of Plaintiff, James Corriveau. While a timely motion was made, at the time of the hearing on the motion, no personal representative had yet been appointed. As noted in the Order denying the motion, an estate, in the abstract, cannot be substituted; only a duly appointed personal representative of the estate can be substituted under Rule 25. Minn Stat. Section 573.01. *See, Kasting v. American Family Mutual Ins. Co.*, 196 FRD 595, 598 (D. Kan. 2000).

On the same day it denied the Motion to Substitute Party, the Court entered an Order to show cause why this case should not be dismissed. [Docket Entry # 113] On December 10, 2012, the Court received a letter from counsel for the Plaintiff, in which he reported that there was still no

representative for the estate. Counsel for the Plaintiff then wrote, "As such, I cannot oppose the Court's dismissal of the above referenced action." [Docket Entry # 114]

Based upon the foregoing and all of the files, records and proceedings herein, IT IS HEREBY RECOMMENDED that the above referenced action be dismissed.

DATED: January 2, 2013.

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **January 16, 2013**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.